

GOVERNMENT OF THE VIRGIN ISLANDS

PUBLIC SERVICES COMMISSION

IN RE:)
) Docket Nos. 289, 563,
Outstanding and Overdue Assessments of the) 606, 612, 613, 614, 620,
Utilities Regulated by the Public Services Commission;) 627, 632, 636, 638 and
i.e., Virgin Islands Water and Power Authority and Virgin Islands) Annual Assessments
Waste Management Authority) Order No. 46/2016
)
)
)

ORDER

This matter is before the Virgin Islands Public Services Commission (hereafter "Commission" or "PSC") as a result of the extraordinary delay and/or non-payment of both Annual and Docket Specific Assessments by regulated utilities.

WHEREAS, the Commission is funded solely through an annual assessment on all utilities and docket specific assessments on specific utilities, and not through the general fund or tax revenues; and

WHEREAS, the Commission's general operations are funded through the annual assessment which is provided in Section 25a of title 30, which specifies in relevant part:

(c) The annual fee for a particular public utility shall be an amount equal to the product of the Commission's total current year assessments and the public utility's revenue ratio. The revenue ratio of a public utility shall be equal to its gross operating revenues divided by the territorial gross operating revenues. The Executive Director of the Commission shall, prior to September 1 of each year, calculate each public utility's fees under this section, and after approval by the Commission, shall notify each such public utility of the amount due.

WHEREAS, the statute provides that all utilities shall pay their annual assessments¹ in a single payment due by September 30 of each year, except that the Water and Power Authority which is required to pay its assessments in quarterly payments; and

WHEREAS, Section 25 of Title 30 provides for the funding of costs related to specific investigations, complaints and actions (identified as docket) by assessment on the specific regulated utility; and

WHEREAS, as of March 15, 2016, the following Annual Assessments were overdue:

Quarter	Utility	PSC Order No.	Fiscal Year	Amount
4 th Quarter/2015	WAPA	52/2014	2015	\$ 36,095.25
1 st Quarter/ 2016	WAPA	72/2015	2016	\$ 224,789.91
2 nd Quarter/ 2016	WAPA	72/2015	2016	\$ 224,789.91

The total WAPA Annual Assessments overdue at this time are \$485,676.07.²

WHEREAS, the Waste Management Authority is also overdue in paying its Annual Assessment for fiscal year 2016, in the amount of \$221,337.47.

WHEREAS, as of March 15, 2016, the following Docket Specific Assessments were overdue:

Docket No.	Docket Name	Order No.	Dated	Amount
------------	-------------	-----------	-------	--------

¹ Title 30, Section 25a provides, in part:

(a) As used in this section: "gross operating revenues" means the gross operating revenues of a public utility derived from intraterritorial regulated operations in the last preceding calendar year *except as it relates to the Virgin Islands Water and Power Authority, gross operating revenue calculations do not include fuel charges, referred to as the "LEAC" (Levelized Energy Adjustment Charge)*. "territorial gross operating revenues" means the aggregate sum of all of the gross operating revenues of all of the public utilities regulated by the Commission. "public utility" includes public utilities and cable television companies.

(b) *Each public utility shall, prior to September 30, of each year, pay a fee, as determined under subsection (c) of this section, to the Commission except that the Virgin Islands Water and Power Authority shall pay a quarterly fee of the annual assessment by the utilities, consistent with the quarterly allotment to the Public Services Commission by the Office of Management and Budget. The fees shall be deposited into the Public Services Commission Revolving Fund; provided, however, that there is hereby established a ceiling of \$1,800,000 for the amount of said fees to be deposited into the Fund, any excess to be covered into the General Fund. [Italics added.]*

² Per Sec. 25a, Title 30, subsection (b) only the Water and Power Authority may pay its assessment in quarterly payments; all other utilities are required to pay in a single payment. See Fn. 1, above.

289	WAPA Levelized Energy Adjustment Clause	36/2014	07/18/2014	\$ 175,000.00
620	WAPA Avoided Cost	37/2015	07/18/2014	\$ 5,000.00
627	Solar Delivered Complaint	38/2014	07/18/2014	\$ 1,500.00
627	Solar Delivered Complaint	08/2015	07/22/2015	\$ 2,000.00
632	WAPA Petition for Feed in Tariff for the Electric System	51/2014	07/19/2015	\$10,000.00
606	WAPA Approval of Solar Energy Projects in Base Rate Electric	67/2015	07/15/2015	\$ 9,550.00
613	WAPA Petition For Increase in Base Rate Water	69/2015	07/15/2015	\$ 13,150.00
614	WAPA Minimum Filing Requirement	70/2015	07/15/2015	\$ 32,220.00
612	WAPA Petition For Ann. Rev. Increase in Base Rate Electric	87/2015	09/23/2015	\$ 450.00
636	Complaint of Sunny Isle Concessions, (Subway) v. WAPA	85/2015	09/23/2015	\$ 7,320.00
620	WAPA Avoided Cost	88/2015	09/23/2015	\$ 5,470.00
289	WAPA Levelized Energy Adjustment Clause	7/2016	10/27/2015	\$ 81,100.00
638	WAPA Management Audit Report	8/2016	10/27/2015	\$ 3,700.00
289	WAPA Levelized Energy Adjustment Clause	29/2016	01/11/2016	\$ 89,117.00
612	WAPA Petition For Ann. Rev. Increase in Base Rate Electric	30/2016	1/11/2016	\$ 8,060.00
638	WAPA Management Audit Report	31/2016	1/11/2016	\$ 19,904.00
620	WAPA Avoided Cost Study		1/11/2016	\$ 1,710.00
563	WAPA Petition for Self-Insurance & Hazard Mitigation	33/2016	1/11/2016	\$ 2,422.00
620	WAPA Avoided Cost Study		1/13/2016	\$ 4,050.00
	WAPA Levelized Energy	36/2016	1/13/2016	

289	Adjustment Clause			\$ 3,820.00
-----	-------------------	--	--	-------------

The total outstanding and overdue docket specific assessments are now \$475,543.00.

WHEREAS, these assessments orders require that the amounts be paid within twenty (20) days of receipt; and

WHEREAS, further non-payment of the assessments has and continues to interfere with the ability of the Public Services Commission to carry out its legal mandate to regulate all utilities and specifically interferes with the ability of the Commission to set "just, reasonable and prudent" rates for WAPA, thereby doing a disservice to Territory, WAPA, and its ratepayers; and

WHEREAS, this issue has repeatedly been brought up for discussion on PSC agendas and on several occasions WAPA has indicated that it would bring its account current but has not done so; and

WHEREAS, the Commission has in all cases permitted that the regulated utilities to include in its computation of rates the annual and docket specific assessments made, which means that these amounts are being or have been collected by the utilities; and

WHEREAS, non-payment of its assessment orders from the PSC constitute an event that is subject to a fine, pursuant to Sections 39 and 40 of Title 30 of the Virgin Islands Code.³ Each day that there is non-payment represents an additional violation.

³ 39. Penalty for violations

(a) If any public utility shall violate any provision of this chapter, or shall do any act herein prohibited, or shall fail or refuse to perform any duty enjoined upon it, or shall fail, neglect, or refuse to obey any lawful subpoena, requirement or order made by the Commission, or any judgment or decree made by any court upon its application, for every such violation, failure, or refusal, such public utility shall forfeit and pay to the Government of the Virgin Islands the sum of \$100 for each such offense. In construing and enforcing the provisions of this section, the act, omission, or failure of any officer, agent, or other person acting for or employed by any public utility acting within the scope of his employment and instructions shall in every case be deemed to be the act, omission, or failure of such public utility.

(b) The Attorney General of the Virgin Islands, at the request of the Public Services Commission, or its designated agent therefor, shall forthwith bring appropriate action to compel adherence to, or enjoin violations of,



NOW THEREFORE, the Commission Orders:

1. The Water and Power Authority and the Waste Management Authority are given notice that they have until April 15, 2016, to bring all assessments current.
2. If those accounts are not brought current by April 15, 2016, the listed assessments shall be subject to the penalties provided in Section 39 from the date the violation of each order commenced.
3. If those accounts are not brought current by April 15, 2016, the listed assessments and the penalties shall be referred to the Virgin Islands Department of Justice, Attorney General's Office, for collection.

So Ordered.

For the Commission,



Date: March 23, 2016

Johann Clendenin, Chair

any lawful orders of the Commission issued pursuant to this chapter, and to recover in the name of the Government of the Virgin Islands the penalties herein provided, and the Court shall give priority to any such actions.

(c) The provisions of this section shall not apply to departments or agencies of the Government of the Virgin Islands furnishing public utility services, however, this provision shall not exempt the Government of the Virgin Islands from claims made pursuant to Title 3, chapter 118 of the Code.

40. Separate offenses

That every day during which any public utility, or any officer, agent, or employee thereof, shall fail knowingly or wilfully to observe and comply with any order or direction of the Commission, or perform any duty enjoined by this chapter, shall constitute a separate and distinct violation of such order, or direction, or of this chapter as the case may be.